IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2382 of 2007
To
FIRST APPEAL No. 2393 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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THE SPECIAL LAND ACQUISITION OFFICER & 1 - Appellant(s)
Versus
VITHALBHAI ISHAWARDAS PATEL - Defendant(s)

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Appearance :
MR KALPESH PANDIT, AGP IN FA NO.2382 OF 2007 TO FA NO.2385 OF 2007 for Appellant(s) : 1 – 2.

MS REETA CHANDARANA IN FA NO.2386 OF 2007 TO FA NO.2389 OF 2007 for Appellant(s) : 1 – 2.

MR APURVA DAVE, AGP IN FA NO.2390 OF 2007 TO FA NO.2393 OF 2007 for Appellant(s) : 1 – 2.
MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/07/2007

ORAL JUDGMENT

1. Admit.

2. Mr.A.J.Patel, learned advocate for the defendant waives service of notice of admission.

3. The Special Land Acquisition Officer, Narmada Project, Unit-3, Sarkhej Gandhinagar Highway, Vejalpur, Ahmedabad and another, appellants, original opponent nos.1 and 2 have filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code, 1908 against the common judgment and award dated 30/9/2005 passed by the learned 4th Additional Senior Civil Judge, Ahmedabad (R), At Navrangpura in Land Acquisition Reference Case Nos.173 of 1999 to 184 of 1999. By the impugned judgment, the learned Judge was pleased to partly allow the said land acquisition reference cases and held that the claimants are entitled to receive the amount of compensation of Rs.27.50 per sq. mt. For the acquired land as an additional compensation

over and above the compensation already awarded by the Land Acquisition Officer. So, in all the learned Judge has awarded Rs.28.88 per sq. mt. The learned Judge has also awarded interest at the rate of 12% from the date of publication of notification under Section 4(1) of the Act i.e. 4/9/1996 to the date of award passed by the Land Acquisition Officer i.e. 30/7/1998 as provided under Section 23(1A) of the Act. The learned Judge has further awarded 30% solatium and running interest at the rate of 9% per annum for the period of one year form the date of taking over the possession of the acquired land and thereafter at the rate of 15% per annum on aggregated amount i.e. additional awarded amount. Solatium and 12% interest under Section 23(1A) till the entire amount is fully aid or deposited.

4. These appeals are filed somewhere on 7/8/2006. Ms.Reeta Chandarana, Mr.Kalpesh Pandit and Mr.Apurva Dave, all learned AGPs are appearing for the appellants. It may be noted that as there was a delay in filing appeals, so, civil applications

for condonation of delay were placed before this Court on 4/4/2007 and on that day, this Court (Coram:Jayant Patel, J.) has condoned the delay in filing the present appeals.

5. When the aforesaid matters are placed for hearing, on behalf of defendant, Mr.A.J.Patel, learned senior counsel appears. The learned AGPs state that as the matter is covered by the judgment of this Court (Coram:J.M.Panchal, J.) dated 2/4/2007 in the case of Special Land Acquisition Officer and another vs. Kalubhai Bababhai Valand in First Appeal Nos.5290 of 2006 to 5302 of 2006, with consent of all the learned advocates, all these appeals are admitted and taken up for final disposal at this stage.

6. The learned AGPs have pointed out the following facts in this behalf.

6.1) The Executive Engineer, Narmada Yojna, Division No.16, Mehsana decided to acquire several lands of village Dangarva, Taluka Viramgam,

District-Ahmedabad for the purpose of construction of Narmada Canal. The details of the lands are as under:

Sr.No.	First Appeal No.	L.A. Case No.	Survey/Block No.	Area in Sq. Mtr.
1	2382/07	181/99	12/2	9174
2	2383/07	173/99	16/1	4957
			17	8214
3	2384/07	174/99	16/3	4859
4	2385/07	175/99	12/1	9004
			20/1	8086
5	2386/07	176/99	13/1 + 2	9740
6	2387/07	177/99	16/2	10927
7	2388/07	178/99	15/1	5693
8	2389/07	179/99	15/3	6070
			21/1	4073
9	2390/07	180/99	18/3	333
10	2391/07	182/99	15/2	6880
11	2392/07	183/99	21/2	1270
12	2393/07	184/99	14	1350

7. The learned AGPs have stated that in all these cases, the Government has issued Notification under Section 4 of the Land Acquisition Act which provides for publication of preliminary notification and powers of officers thereupon and the same was published in Government Gazette on 4/9/1996. The State Government has also issued notification under Section 6 of the said Act which

provides for declaration that land is required for a public purpose and the same was published on 12/3/1997. The Land Acquisition Officer thereafter, after hearing all the claimants, passed the award and awarded Rs.1.38 per sq. mt. to the claimants.

8. Being aggrieved and dissatisfied with the same, the claimants have filed various Reference cases as stated above in the table. The claimants have also produced the documentary as well as oral evidences. The department has also made submission and ultimately, the learned Trial Judge by the judgment and award, was pleased to hold that the claimants were able to prove that the compensation awarded by the Land Acquisition Officer is inadequate and not proper and the claimants are entitled to receive Rs.27.50 per sq. mt. for the acquired land as an additional compensation over and above Rs.1.38 per sq. mt. Awarded by the Land Acquisition Officer in this behalf. The learned Trial Court has also awarded interest and solatium as indicated above.

9. On behalf of the appellants, the learned AGPs have assailed the judgment and order of the learned Trial Judge on several grounds. They have stated that the Court has awarded very large amount of compensation and therefore, this Court may allow these appeals.

10. On the other hand, Mr.A.J.Patel, learned senior counsel for the defendants-original claimants has stated that he is relying upon the judgment and order of this Court (Coram:J.M.Panchal, J.) dated 2/4/2007 in the case of Special Land Acquisition Officer and another vs. Kalubhai Bababhai Valand in First Appeal Nos.5290 of 2006 to 5302 of 2006.

11. In the present case, I have gone through the judgment of the Court below in this behalf. In this case, the claimants have produced oral evidence on oath of Patel Vithalbhai Ishawardas at Exh.13. In his deposition, he has stated that he is the claimant of Survey No.12/2 and his land admeasuring 9174 sq. mt. which were acquired for the purpose of construction of Narmada Canal and

the lands of other farmers were also acquired for the same purpose and all the acquired lands are situated just adjoining to each other. It was also stated in the deposition that all the acquired land are equal and fertile land and having irrigation facilities by way of wells and Bore wells and the farmers of village Dangarva are taking two to three different crops in a year and earning net agricultural income of Rs.1,00,000/- per vigha per year. It is further stated in the deposition that their village is having facilities like water, irrigation light, pakka road, Co.Op. Society, post office, primary school, health centre, milk society etc. and in that way, the village is one of the developed villages of Viramgam Taluka. It was further stated in the deposition that only one kilometer away Katosan Road is passing by which is well developed and rolling mills, factories, railway stations, societies, shopping centre, pakka road for going towards Kadi, Mehsana, Ahmedabad, Viramgam and Detroj are situated and in that way the village is developed village having another facilities like pakka houses, drainage etc. and the

population of village Dangarva are around 8000 people. It was further stated that the ONGC, Unit-2 has acquired land and considered the rent of Rs.11.25 for a period of three years considering the production, irrigation facility, fertility etc. and according to which they are entitled to receive compensation of Rs.75.25 per sq. mt. The said witness was cross-examined by the learned DGP, Mr.P.M.Trivedi for the opponent no.1 and during the cross examination, the said witness has denied that his acquired land are of middle range of land. It is admitted that they have received notice under Section 9 of the Act and it is denied that with the consent of farmers, the Collector has decided the price but at that time they have demanded in writing for more price. It is denied that Viramgam is situated 65 km. away and it is admitted that there is no railway station in their village. It is denied that the fields are situated two km. away from Gamtal Land and village is two km. away from pakka road. It is denied that at the time of acquisition, there was no primary school and high school in the village. It is admitted that they

have not produced any documentary evidence to prove that the crops was there on each field. It is also admitted that they have not produced any evidence to prove income of rupees one lakh per year. It is denied that the acquired land are uneven land. It is denied that they have to keep accounts. The said witness was further cross-examined by the learned advocate for the opponent no.2 and during the cross-examination, the said witness has denied that the acquisition proceedings done in his presence. It is denied that they have not filed any objection regarding the price of the acquired land. It is denied that at one time only one crop is possible. It is denied that they have not produced any accounts as they are not maintaining. It is admitted that Madrisana is situated 2.5 km. away from our village and the land of village Madrisana acquired earlier by Narmada Division. It is admitted that they are relied upon award of LAR No.2375 of 1996 of acquired land of village Madrisana adjoining to village Dangarva. In the case of Madrisana, Rs.21.60 was awarded as additional compensation.

12.The opponent no.1 has also examined one Shri Bhupendrakumar K. Kumar vide Exh.20 and the said witness has in his deposition stated that he is working as Special Land Acquisition Officer, Narmada Yojna, Unit-3 at Ahmedabad and in this case, the Acquisition Officer has passed award for the construction of Railway Diversion of Narmada Main Canal considering the fertility, level and surrounding sale deed, surrounding development etc. it is further stated that there is no industries in village Dangarva and taluka centre is situated 65 km. away. It is stated that Nani Rantai is situated three km. away from village Dangarva and land of both the villages are equal so far as fertility is concerned. It is further stated that the land of village Nani Rantai were acquired earlier and the reference court has awarded market price of Rs.11.20 per sq. mt. for the acquired land of village Nani Rantai.

13.It is further stated that as per the Jantri of Stamp Duty the price of irrigated land is between

Rs.12.50 to Rs.15.00 per sq. mt. and for non irrigated land it is between Rs.8.50 to rs.9.50 per sq. mt. and for middle type of land the price decided between Rs.5.00 to Rs.6.50 per sq. mt. It is also stated that the sale deed of Survey Number 259/1 admeasuring 1 Hectare 17 Are and 36 sq. mt. of village Dangarva is valued at Rs.2,00,000.00, for survey no.244 admeasuring 78.91 sq. mt., 227/2 of 3856 sq. mt., sale deed is for Rs.53,000.00 and in that way the survey no.219/1, sale deed is of Rs.1,66,000.00, for survey no.499 sale deed is for Rs.2,34,000.00, for survey no.509/7 sale deed is of Rs.9,000.00 and for survey no.260/1 price of land is of Rs.60,000.00.

14. It is also stated that the judgment of village Madrisana bearing No.2375/96 is still not considered. The said witness was also cross-examined. In the cross-examination, the witness has admitted that there that there is a difference between agriculture and non-agriculture land. It was admitted that the land of present case are having characteristic of being converted into non

agricultural land. It is admitted that in each award, the same is not written. It is admitted that there is no evidence regarding distance between Nani Rantai and village Dangarva. It is admitted that they have not considered the Judgment of village Nani Rantai with this case. It is the award of village Nani Rantai, the award of rupees two lakhs awarded per hectare is awarded. It is also admitted that the Jantri of one case is not applicable to another case.

15. Opponent no.2 has also examined witness Ganshyamdas Omprakash Gupta at Exh.17. The said witness in his deposition has stated that he is serving as Dy. Executive Engineer in Narmada Nigam since 22 years and Dangarva is within his jurisdiction and he has seen the land of village Dangarva which is equal and fertile land and at the time of acquisition he was not in the office but he is giving deposition relying upon record. It is further stated that village Dangarva is situated 50 km. away from Viramgam. It is further stated that the land of village Dangarva and Madrisana are of a

good quality land and Nani Rantai is situated 7 km. away from Dangarva and for the acquired land of village Dangarva, with consent between Nigam and farmers, the award of rupees two lakhs per hectare passed. The said witness was cross-examined. In the cross-examination, he has admitted that in the award, it is mentioned that the acquired land were being irrigated by well and tube-well. It is admitted that he has no personal knowledge about acquisition proceedings as demanded that Dangarva is situated on one km. away from Katosan but according to him it is two km. away. It is admitted that in village Katosan Railway Station is situated and between both the village, a Dairy Centre is situated and there is a Pakka Road on village Dangarva and from that road, it is possible to proceed towards Ahmedabad, Mehsana, Kadi etc. It is admitted that at present Dangarva is in Detroj Taluka. It is denied that Dangarva is situated ten km. away from Detroj. It is admitted that sim of village Dangarva and Madrisana is just adjoining to each other and the distance of three km. stated by him is between the Gamtal Land of

both the villages. It is admitted that village is having facility like light, water, primary school, high school etc. it is admitted that Nani Rantai is the last village of Taluka.

16.The claimant has produced following documentary evidence vide list Exh.15 which have been admitted in evidence with the consent of other side.

(1) Judgment of village Madrisana in LAR No.2375 of 1996 at Exh.16.

17.The opponents have also produced following documentary evidence vide exh.21.

(1) Award of village Nani Rantai, No.21 of 2003 at Exh.22

(2) Jantri of village Dangarva at Exh.23

(3) Sale deed of village Dangarva at Exh.24 to 29.

18.The learned Judge has considered entire evidence on record. The learned Judge has also considered some of the judgments in this behalf, which laid down the principle of compensation and ultimately awarded additional Rs.27.50 per sq. mt.

19.I have gone through the judgment of my brother justice Mr.J.M.Panchal in the case of Special Land Acquisition Officer and another vs. Kalubhai Bababhai Valand dated 2/4/2007 which has been produced and relied upon by Mr.A.J.Patel, learned senior counsel for the original claimant. In the said case of Kalubhai Bababhai Valand, the land of village Dangarva was acquired for the purpose of construction of canal under Narmada Project. In that case, Notification under Section 4(1) was issued on 4/9/1996. In that case also, the Special Land Acquisition Officer by his award dated 10/8/1998, awarded the compensation at the rate of Rs.1.38 per sq. mt. The Reference Court has awarded additional amount of compensation at the rate of Rs.28/- per sq. mt. The said award was challenged. The appeal was heard by this Court. This Court, on the basis of award of the Reference Court, which was subject matter of challenge in First Appeal Nos.105 of 2007 to 119 of 2007, decided the case of the claimants on 2/4/2007. In the said matter of Bababha Dahyabhai Patel i.e.

First Appeal Nos.105 of 2007 to 119 of 2007 also, there was a joint consensus. In the said case of Bababhai, this Court has awarded Rs.23/- per sq. mt. and therefore, in the matter of Kalubhai Bababahai Valand, as there was a same dispute, this Court has awarded Rs.25.50 per sq. mt. for the acquired lands.

20.I have gone through the above stated judgment of this Court. The learned AGPs have stated that if this Court passes the order as per the said judgment, then the same will be in the interest of justice of both the parties on the ground that land which was acquired in the case of Kalubhai (supra) and land in the present case are of same village.

21.As far as earlier award was concerned, as indicated by this Court, the matter was placed before my brother justice Mr.J.M.Panchal, i.e. First Appeal No.5290 of 2006. In that case, common judgment dated 30/9/2005 in Land Acquisition Case Nos.203 of 1999 to 215 of 1999 was challenged and the learned Judge has awarded compensation at the

rate of Rs.28/- per sq. mt. for the acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer i.e. at the rate of Rs.1.38 per sq. mt. Here, the land in question is of the same village and notification is also of the same date. I have relied upon the same and I have considered the said judgment dated 2/4/2007 passed by this Court. This Court (Coram:J.M.Panchal, J.) has made following pertinent observations in para 8 and 9, which are as under:

21.1) “Para 8. It is agreed between the learned counsels for the parties that the xerox copies of sale deeds were not relevant for the purpose of determining market value of the lands acquired in the instant case. It may be mentioned that in First Appeal Nos.105 to 119 of 2007 decided on April 2,2007, this Court has held that the claimants, whose lands were acquired from village Dangarwa pursuant to publication of notification issued under section 4(1) of the Act in the Official Gazette on August 8,1995, were entitled to compensation in all at the rate of Rs.23/- per

sq.mt. This judgment has been brought to the notice of the court by the learned counsels for the parties. The learned counsels for the parties have prayed that the said decision of the High Court relating to the lands of this very village be considered and made basis for determining the market value of the lands acquired in the instant case. In the earlier cases, the previous award of the Reference Court relating to the lands of village Madrisana was relied upon for the purpose of holding that the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt. and the same award i.e. award of the Reference Court relating to the lands of village Madrisana is also relied upon by the claimants in the instant cases. There is also a general consensus between the learned counsels for the parties that the claimants in the instant cases also would be entitled to compensation on the basis of the judgment delivered by the High Court relating to the lands of this very village. It may be mentioned that earlier for acquiring the lands of village Dangarwa, Notification under Section 4(1) of the Act was published in the official gazette on August 8, 1995 whereas in the instant cases

notification was published in the Official Gazette on September 4, 1996. Therefore, the claimants in the instant cases would be entitled to benefit of reasonable rise in price of the lands at the rate of 10% per annum. If so calculated, the claimants would be entitled to rise in price of the lands at the rate of Rs.2.30 Ps. per sq.mt., which figure is rounded off to Rs.2.50 Ps. for the sake of convenience of calculation. Thus, on the basis of previous award of the Reference Court, which was subject matter of challenge in First Appeal Nos.105 to 119 of 2007, this Court is of the opinion that the claimants in the instant cases would be entitled to compensation at the rate of Rs.25.50 Ps. per sq.mt. for their acquired lands and not at the rate of Rs.29.38 per sq.mt. as held by the Reference Court. The appeals, therefore, will have to be accepted in part.

21.2) Para 9. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated September 30,2005, rendered by the learned 4th Addl.Senior Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case Nos. 203/99 to 215/99 awarding additional amount of

compensation to the claimants at the rate of Rs.28/- per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.1.38 per sq.mt. by his award dated August 10,1998, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.25.50 Ps. per sq.mt. for their acquired lands. The other statutory benefits which have been granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs."

22.I have gone through the facts and circumstances of the case. I have also relied upon the judgment of this Court in the case of Kalubhai Bababhai Valand (supra). In the present case, the land of village Dangarva was acquired and notification under Section 4 was published on 4/9/1996 where as in the case of Kalubhai Bababhai Valand, the land of village Dangarva was acquired and notification under Section 4 was issued on 3/6/1995. The

learned AGPs as well as learned advocate for the claimants have also stated that lands which have been acquired in both the cases are almost similarly situated lands. In view of the same, the claimants are entitled for the compensation.

22.1) As per Section 23 of the Land Acquisition Act, the method of valuation to be resorted to by a court in determining an acquired land's just equivalent price, has to, necessarily depend on the nature of the evidence adduced by the parties in that regard. When in a given case, the parties produce evidence of sales relating to the acquired land or lands in the vicinity of the acquired land and require that court concerned to determine the compensation payable for such acquired land, such court naturally resorts to what is known as 'the Comparable Sales Method' of valuation of land. Indeed, 'Comparable Sales Method' of valuation of an acquired land is invariably resorted to by every court ever since the Privy Council in Atmaram Bhagwant Ghadgay v. Collector of Nagpur, AIR 1929 PC 92, regarded that method as one which furnishes

'a healthy criterion' for determining the market value of an acquired land.

23.Here, not only comparable sale has been produced but thereafter the matter was decided and ultimately came before this Court and this Court has also passed an order on vicinity of the lands. Market value of the land which has been determined by this Court is proper and therefore, in connection with the same, same order is required to be followed in this behalf. In view of the same, the claimant are entitled for the compensation as stated in the aforesaid judgment.

24.In view of the same and in view of the judgment referred above, this Court is of the view that the claimants in the instant case are entitled to receive compensation at the rate of Rs.25.50 per sq. mt. for the acquired lands including Rs.1.38 per sq. mt. which was already awarded by the Special Land Acquisition Officer and not at the rate of rs.28.88 per sq. mt. as awarded by the Reference Court. These appeals, therefore, will

have to be accepted in part.

25. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated September 30,2005, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpura in Land Acquisition Case Nos. 173/99 to 184/99 awarding additional amount of compensation to the claimants at the rate of Rs.27.50/- per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.1.38 per sq. mt. by his award dated 30/7/1998 is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.25.50 per sq. mt. for their acquired lands including Rs.1.38 per sq. mt. awarded by the Land Acquisition Officer. The other statutory benefits which have been granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs.

26.The Registry is directed to draw the decree in terms of this judgment immediately.

(K.M.Mehta, J.)

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